

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Union Pacific Railroad
49 Stevenson Street
San Francisco, California
94105

EPA ID No. CAD000628313

Respondent.

Docket HWCA 2000-0000

CONSENT ORDER

Health and Safety Code
Section 25187

The State Department of Toxic Substances Control
(Department) and Union Pacific Railroad (UPRR) enter into this
Consent Order and agree as follows:

1. San Francisco Bay Area Rapid Transit District (BART)
generated non-RCRA hazardous waste soils from the excavation of
the BART and SFO extension which were handled and stored at the
Union Pacific South San Francisco Site (UPSSF Site), located in a
Union Pacific rail yard along a railroad spur between Harbor Way
and Littlefield Avenue in South San Francisco.

2. The Department inspected the Site on January 25,
2002.

3. The Department alleges the following violations:

3.1. The Respondent and BART violated California Health and Safety Code section 25201, subdivision (a) in that on or about July 3, 2001, July 5, 2001, July 9, 2001 and January 16, 2002, Respondent and BART stored non-RCRA hazardous waste soil at the UPSSF Site, a site that did not possess a hazardous waste facility permit or other grant of authorization from the Department. The Respondent and BART were granted authorization from the permitting requirements to store hazardous waste at the UPSSF site by way of Variance No. 99-H-VAR-01 that became effective July 30, 1999 and expired on May 31, 2001.

3.2. The Respondent and BART violated California Health and Safety Code section 25160, subdivision (b)(1), and California Code of Regulations, Title 22, section 66262.20, subdivision (a), in that on or about July 3, 2001, July 5, 2001, July 9, 2001 and January 16, 2002, BART offered for transportation 84 truckloads of non-RCRA hazardous waste soil for off-site storage, without preparing uniform hazardous waste manifests. Respondent accepted said 84 truckloads of non-RCRA hazardous waste soil for storage at the UPSSF site without signing uniform hazardous waste manifests for each of the truckloads. Respondent and BART were granted Variance No. 99-H-VAR-01 which authorized the use bills of lading instead of uniform hazardous waste manifests for the transportation of non-RCRA hazardous waste soils excavated from the BART extension to SFO to the UPSSF Site. The variance expired May 31, 2001.

4. A dispute exists regarding the alleged violations.

5. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

6. Jurisdiction exists pursuant to Health and Safety Code section 25187.

7. Respondent waives any right to a hearing in this matter.

8. This Consent Order shall constitute full and final settlement of the violations alleged above, as to Respondent and BART, but does not limit the Department from taking appropriate enforcement action concerning other violations.

SCHEDULE FOR COMPLIANCE

9. Respondent shall comply with the following:

9.1.a. Effective immediately, Respondent shall cease storing off-site hazardous waste at an unauthorized point without authorization from the Department.

9.1.b. Effective immediately, Respondent shall cease the transportation of non-RCRA hazardous waste soils without use of a uniform hazardous waste manifest.

9.1.c. Effective immediately, Respondent shall cease the acceptance of hazardous waste without a uniform hazardous waste manifest.

9.1.d. Within 30 days of the effective date of this order, Respondent shall submit to the Department the Closure Certification Report as required in paragraph 18 of Variance No. 99-H-VAR-01.

9.2. Submittals: All submittals from Respondent pursuant to this Consent Order shall be sent simultaneously to:

Ms. Patti Barni
Statewide Compliance Division
Department of Toxic Substances Control
700 Heinz Avenue, Suite 210
Berkeley, California, 94710-2721

and

Mr. David Wright
Permitting Division
Department of Toxic Substances Control
P. O. Box 806
Sacramento, California 95812-0806

9.3. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

9.4. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondent with recommended changes and a date by

which Respondent must submit to the Department a revised document incorporating the recommended changes.

9.5. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

9.6. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

9.7. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent or BART, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

9.8. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and

consultants of the Department, and any agency having jurisdiction. In order to ensure safety, the Department shall observe all of Respondent's safety rules when on the site. Notwithstanding the foregoing, nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

9.9. Sampling, Data, and Document Availability:

Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Consent Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this

Consent Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Consent Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order. Nothing herein shall be construed as requiring the production or retention of documents and writings which are subject to the attorney-client or attorney work-product privilege.

9.10. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 12.3, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondent or their agents in carrying out activities pursuant to this Consent Order.

9.11. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

9.12. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

9.13. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

PAYMENTS

10. Within 30 days of the effective date of this Consent Order, Respondent shall pay the Department a total of \$11,972.50, of which \$ 3,680.77 is a penalty and \$ 8,296.73 is reimbursement of the Department's costs. Respondent's check shall be made payable to Department of Toxic Substances Control, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent:

To: Ms. Patti Barni
Statewide Compliance Division
Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 95812-0806

If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

OTHER PROVISIONS

11.1. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

11.2. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

11.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondent, its successors and assignees, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

11.4. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

11.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

11.6. Compliance with Waste Discharge Requirements: Respondent shall comply with all applicable waste discharge

requirements issued by the State Water Resources Control Board or
a California regional water quality control board.

Dated: 6/2/03

(Original signed by Michael L. Whitcomb)

Union Pacific Railroad

Dated: 6/5/03

(Original signed by Charlene Williams)

Ms. Charlene F. Williams,
Chief

Northern California Branch
Statewide Compliance Division
Department of Toxic Substances
Control